

EXHIBIT

A

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT
Case No. 5:17-CV-194

MISTY BLANCHETTE PORTER, M.D.,
Plaintiff,

V.

DARTMOUTH-HITCHCOCK MEDICAL CENTER,
DARTMOUTH-HITCHCOCK CLINIC,
MARY HITCHCOCK MEMORIAL HOSPITAL,
and DARTMOUTH-HITCHCOCK HEALTH,
Defendants.

D E P O S I T I O N

- of -

ROBERT L. BANCROFT, Ph.D.

held on Wednesday, October 30, 2019, at
the offices of Vitt & Associates, PLC,
8 Beaver Meadow Road, Norwich, Vermont,
commencing at 10:15 a.m.

APPEARANCES:

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On behalf of the Plaintiff

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On behalf of the Defendants

IN ATTENDANCE: JULIA KORKUS

COURT REPORTER: KAREN L. WRIGHT, RPR, CRR

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1 I may not, but critiquing the analysis.

2 Q. Got it. So what did you do to prepare for your
3 deposition today?

4 A. Yest- -- not yesterday. Monday I went through my
5 file.

6 Q. Okay.

7 A. And then I -- yesterday I did -- I came down here
8 at the request of Mr. Vitt and met with him for
9 about -- met with Mr. Vitt and Ms. Kramer for
10 about an hour and a half.

11 Q. Okay. You said you looked through your file.
12 What documents are in your file?

13 (Julia Korkus entered the deposition.)

14 A. I have my October 1st, 2019, report and my
15 preliminary report from October of 2018. And
16 I've got handwritten notes. And I've got tax --
17 some W-2s. Several e-mails from Ms. Korkus.

18 Benefit statement from
19 Dartmouth-Hitchcock dealing with pensions, health
20 care. A letter from Dartmouth-Hitchcock to
21 Dr. Porter regarding her benefits at -- pension
22 benefits at the time of her termination. I've
23 got e-mails.

24 I have pay stubs from the University
25 of Vermont, 2019. 2018 income tax return.

1 Again, a bunch of W-2s. More e-mails, e-mails,
2 e-mails.

3 I think this may be a duplicate copy,
4 but it -- a duplicate, but it has to do with the
5 pensions at Dartmouth.

6 A letter from Dartmouth dealing
7 with -- basically what was in -- what I got out
8 of this was her current pay rate. I think
9 there's some fringe benefit information in there.

10 And then I believe Dr. Porter sent me
11 this summary of medical school faculty
12 compensation for all schools. I printed it out,
13 but I didn't rely on it.

14 ATTORNEY JOSEPH: Okay. Could we --
15 A. Actually, I have this information.

16 ATTORNEY VITT: Could we do what?

17 ATTORNEY JOSEPH: Could we go off the
18 record.

19 (Recess taken.)

20 ATTORNEY JOSEPH: Back on the record.

21 Q. So you mentioned that you met with Geoffrey and
22 Katie yesterday?

23 A. Yes.

24 Q. Did you review any documents with them?

25 A. No.

1 Q. Okay. And can you give me -- go ahead.

2 A. I don't -- at the actual meeting, I did not
3 review any documents. When I got home, an e-mail
4 was sent to me on an issue that we had discussed.
5 And that was -- had to do with Dr. Porter's
6 housing in Burlington.

7 I had been under the assumption, based
8 on my telephone conversation with her --
9 obviously, I must have misunderstood or -- that
10 she had a -- wanted a three-bedroom or possibly
11 four-bedroom home so that she could have her
12 family there.

13 And when I got home yesterday
14 afternoon, there was an e-mail waiting for me
15 that said that she -- her place that they bought
16 was only a two-bedroom home, which would have
17 some implications for my rejections of her costs.

18 Q. Okay.

19 A. 'Cause my costs were based on a three/
20 four-bedroom.

21 Q. Okay. We'll get into that --

22 A. Yeah.

23 Q. -- a little later.

24 So can you give me a description of
25 the work that you were asked to do, how -- the

1 way that it was described to you on this matter?

2 A. I don't think there was much discussion. To be
3 honest with you, I don't remember. I can only
4 tell you what I -- I think was said, which is
5 pretty much the same in every case, you know,
6 that I've got this case. It's a wrongful
7 termination or employment case. Here is the name
8 of the plaintiff. And here is the name of the
9 defendant. I would ask for that because I want
10 to make sure I don't have any conflicts. And
11 they would like to retain my services to develop
12 projections of the individual's economic loss.

13 Q. What documents were you provided?

14 A. Boy, it's rather lengthy. And I should point out
15 that not all the documents I received are in that
16 file. Many of them that were sent -- they're --
17 I think everything I -- or most everything, if
18 not everything, came PDF.

19 So many of them are on my computer.
20 They were just, you know, large files. A lot of
21 them had to do with the benefit program. I did
22 print out one of them. I think I had '17, '18,
23 and '19, and I only printed out one of them.

24 So I was provided with income tax
25 returns for at least 2018, W-2s for '17 and '18.

1 I don't remember if I was provided with a -- I
2 think I was provided with a '17 income tax
3 return. I don't remember off the top of my head.

4 I was provided with pay stubs at UVM
5 for 2019. I think I mentioned there was several
6 things on -- on Dartmouth-Hitchcock's fringe
7 benefit program which dealt with medical and --
8 and retirement plans.

9 I mentioned, I think at the -- before
10 we went on break, is that Dr. Porter sent me a
11 list of -- of pay for various doctors. I printed
12 it out, but I never used it, never relied on it.

13 And then there's a lot of information
14 that was sent to me via e-mail that had to do
15 with questions that I had. A lot of them had to
16 do -- many of the e-mails had to do with early on
17 in the -- in -- when I was doing my analysis, the
18 preliminary one, and there was some confusion on
19 my part. At that point, many things had not been
20 established for Dr. Porter, so there was
21 discussions about when she -- what might happen
22 in the future. So that information is scattered
23 throughout the -- my file.

24 And I did make an attempt to print out
25 any e-mail that was -- that was pertinent or that

1 I relied on, but I did not always print out every
2 single one of the attached documents.

3 Q. Okay. So you mentioned there were some documents
4 not in your physical file that you had with you
5 today that are on your computer?

6 A. Yes.

7 Q. Aside from benefits summaries for
8 Dartmouth-Hitchcock, do you remember what any of
9 those other documents are?

10 A. Those are the major, I think -- right now, I'm
11 going to say that the only ones I can think of
12 off the top of my head are the whole listing of
13 the Dartmouth-Hitchcock benefits for '17, '18,
14 and '19. That's all that comes to mind, but
15 there -- there very may well be others; I can't
16 tell you for sure.

17 Q. And so all of the documents that you relied on
18 are in the file that you brought with you today;
19 is that correct?

20 A. I believe so.

21 Q. Okay. And who all did you talk to about your
22 analysis?

23 A. Mr. Vitt, Ms. Kramer, Ms. Korkus, and I didn't
24 discuss the results, but I had at least one, if
25 not two conversations with Dr. Porter, but that

1 A. Sure. The first step is to project out what she
2 would have earned if she'd continued her
3 employment with Dartmouth-Hitchcock. And that's
4 composed of her salary plus the value of fringe
5 benefits. In this case, fringe benefits that
6 were of value that I valued were contributions to
7 health insurance and also contributions to a
8 retirement plan.

9 And then the next step is to -- well,
10 I guess is looking at post-termination earnings,
11 which again is composed of income plus any
12 benefits that she might receive. Up through
13 2018, I used what she actually earned, and then
14 in 2019 what she'd earned up through July 31, and
15 then used that as a basis to forecast forward.

16 But anyways, that was -- and then some
17 other assumptions on what she would do after
18 2021, and carried that on out, along with any
19 fringe benefits that might have been available.
20 There wasn't any after July -- after June 2021.

21 And so when -- and so then I'd have
22 the -- I'd have the projections of -- of the
23 Dartmouth-Hitchcock earnings. And then I would
24 offset that by projections -- or actual and
25 projections of what she would earn

1 post-termination. And that would be her gross
2 loss.

3 From that, I estimate what kind of
4 income taxes she would have had to pay each year
5 on the -- on the loss. And then the next step is
6 to determine the present value. And the present
7 value, I add interest to historical and then I
8 discount future loss projections to the present.

9 And then the next step -- and then
10 I -- it's a mathematical thing. I have a running
11 total to assist the trier of fact.

12 And then the next important step is
13 estimating the tax liabilities that would be
14 assessed on any award that she might receive.

15 Q. Okay. Was there any other approach that you
16 considered?

17 A. No.

18 Q. Okay. And how did you develop this approach?

19 A. It's an approach that I've been using for -- for,
20 I don't know, 20, 25 years. Same. It hasn't
21 varied.

22 Q. Is it generally accepted amongst economists?

23 A. Yes.

24 Q. Have you seen any other approaches being used to
25 calculate projected lost earnings?

1 subsequent years you've assumed Dr. Porter would
2 receive annual wage increases of 2.5 percent.

3 What's the basis for that 2.5 percent?

4 A. We discussed it when we were talking about in
5 July of '18 the 2.5 percent.

6 Q. Okay. So moving on to Footnote 2 or Assumption
7 Number 2. You state "Dr. Porter's fringe
8 benefits, given her continued employment with
9 DHMC, include the medical center's contribution
10 to health insurance and a retirement plan."

11 Are those the only two components that
12 you used to estimate fringe benefits?

13 A. Those are the only two that I had of -- there are
14 other fringe benefits offered by Dartmouth, but
15 these are the two that have value. I mean, they
16 offer life insurance; but I'm assuming she lives,
17 so --

18 Q. Okay.

19 A. -- no value. And there are some other ones, too.

20 Q. What were the others that you --

21 A. Well, Social Security. But I did not include
22 Social Security in there because she's at
23 least -- in most years, she's over the -- it's
24 about \$132,000, I think is the cap that you
25 assess the 5.4 percent, which is -- or

1 5.5 percent, which is the old age of retirement,
2 which you hope you're going to get back when you
3 retire. I probably -- I might get most of it
4 back, but I don't know about you.

5 Q. We'll see.

6 A. So I didn't include that because it --
7 post-termination, I assume that she's -- you
8 know, that's going to be covered, she's going to
9 be earning at least that much.

10 Q. Okay. Anything else that you didn't include in
11 fringe benefits?

12 A. I don't remember. I had the documents with the
13 fringe -- various fringe benefits they had. You
14 know, they have a wellness program and, you know,
15 et cetera, et cetera. But the two of significant
16 value were the health insurance and the
17 retirement.

18 Q. Okay. But you reviewed all of the other --

19 A. Well --

20 Q. -- benefits offered by --

21 A. -- I read the document.

22 Q. Okay.

23 A. If you look at my reports, whether they be
24 personal injury or wrongful death or employment,
25 there's generally only three fringe benefits that

1 I value in there: the employer's contribution to
2 Social Security, the employer's contribution to
3 health insurance and the dental and vision, and
4 contribution to retirement plan. In this case, I
5 did not have Social Security in here.

6 Q. Okay. What's the basis for your assumption that
7 the value of DH's medical insurance contribution
8 is assumed to be \$15,000 in 2017?

9 A. Well, actually, I think it's quite conservative.
10 But if you take a look -- I was hoping I could
11 find it and I -- as I said earlier, I think I
12 have your benefits. And I think I have the one
13 for 2019 and '18. And I think those may be on my
14 computer, but I'm hoping...

15 On page 14 of that document.

16 Q. This is the document with --

17 A. "Your Benefits, Your Health, Choices for Healthy
18 Living." This is in 2017.

19 If you look at page 14, you'll see
20 that -- what the employee had to contribute,
21 which for a family program was \$200 a month,
22 which is very low. That's \$2,400. A family
23 plan's going to cost at least \$25,000. So my
24 15,000, I'd argue, is very low. Extremely
25 conservative.

1 On page 14, that's what -- what the
2 employee has to pay for -- for a health insurance
3 plan, which is -- for a family is going to be at
4 least \$25,000.

5 Q. When you refer to \$200, you mean this entry that
6 says 198.56?

7 A. Yes. And even if she fell into the FTE between a
8 half and a little less than three-quarters, it's
9 still a little less than \$300. So it's -- the
10 15,000 is an extremely conservative number.

11 Q. What's the basis for assuming the total
12 contribution by DH based on Plaintiff's
13 contribution?

14 A. On the retirement?

15 Q. Yes.

16 A. Well, if I can find that here. I know it's in
17 the '19 one. And I apologize. I thought I
18 printed that one page out. It may be in here.
19 Let me see if I can find it, if they actually put
20 it in the '17 one. On page 34.

21 Q. Okay.

22 A. If you look at number of base contribution
23 points, she would be 220, I believe, based on my
24 calculations. What she would be entitled to is
25 7 percent contribution, base contribution, plus

1 an additional 5 percent because her earnings
2 would be over 118,500.

3 Q. And this is DH's contribution to medical
4 insurance?

5 A. No. Retirement. I thought you asked about
6 retirement?

7 Q. I was asking about medical insurance.

8 A. Oh, I'm sorry.

9 ATTORNEY VITT: No. You asked about
10 retirement.

11 ATTORNEY JOSEPH: Okay.

12 ATTORNEY VITT: I mean, the question
13 was retirement.

14 ATTORNEY JOSEPH: Oh, okay.

15 Q. I meant -- sorry. I meant to ask what the basis
16 was for calculating DH's medical insurance
17 contribution based on her -- her contribution,
18 which was listed on page 14.

19 A. Well, at the time, I think I -- I think I --
20 trying to be conservative, and I was estimating
21 that the cost would be around 20,000. And I
22 assumed she was paying, you know, around 3 or 4.
23 So it comes out to be about 16. I used 15 to be
24 conservative.

25 But, in fact, in going back and

1 reviewing it, particularly when I took a look at
2 the '19 one, 15 is way on the low side. It
3 probably would be -- a more reasonable estimate
4 would be 20,000 or more, maybe 22,000.

5 Q. And you're basing that just based on your
6 estimate of what the percent of her contribution
7 would be versus the total cost?

8 A. Yes. Knowing what -- having a rough idea of what
9 cost -- medical insurance costs if you go out and
10 buy it as a private individual, versus -- and
11 then comparing that with how much the employee
12 has to contribute, there's quite a differential.
13 And I'm saying the differential's probably at
14 least 20,000, not 15.

15 Q. And what's the basis for the assumption that the
16 value of DH's contribution to medical insurance
17 would increase at 2.5 percent annually? Is that
18 the same as the --

19 A. It's the same -- it is the same as the wages.
20 But actually, I think everybody -- pretty common
21 knowledge that medical expenses have -- insurance
22 premiums have been increasing much faster than
23 inflation or wages increases.

24 And I alluded to that when I said that
25 when you look at wage increases and then you

1 compare that with increases in total
2 compensation, which includes health insurance,
3 it's a great -- it's a higher number, 'cause
4 health insurance is going up at a faster rate.

5 Q. And then going back to what you touched on a
6 moment ago, retirement plan contributions. That
7 was on page 34, you said. Could you walk me
8 through how you came up with the 12 percent?

9 A. 34?

10 Q. Yes.

11 A. Yes. That's how I came up with the -- it's the 7
12 plus the 5.

13 Q. Okay. So looking at Footnote 4, that's
14 Assumption 4, in Scenario A. Actually, for both
15 Scenarios A and B, you've noted that for that
16 assumption "Dr. Porter's actual earned income is
17 reported for the years 2017 and 2018."

18 Did you determine her actual income
19 from her W-2s for those two years?

20 A. Yes.

21 Q. Okay. And you reviewed her actual earnings -- or
22 her, I guess, actual earnings from the University
23 of Vermont Medical Center through July 31st,
24 2019, in order to project the rest of her 2019
25 income?

1 continue to work at the University of Vermont
2 Medical Center one day a week for 48 weeks a year
3 at a 2021 per diem rate of \$190 per hour."

4 What's the basis for assuming that she
5 would continue at UVM?

6 A. Well, that's what she said she would do.

7 Q. Okay.

8 A. It wasn't my role to question her.

9 Q. And the one day a week was also something that
10 came from Dr. Porter?

11 A. Yeah, that she would commute there one day a
12 week. I thought that was going to be hard, but
13 she said that she -- that's what she planned to
14 do. It was a possibility, I should put it.

15 Q. And what was the basis for the \$190 per hour per
16 diem rate --

17 A. I believe --

18 Q. -- assumption?

19 A. -- the current rate or the rate was 175. And I
20 just increased it, I think, by 2-1/2 or whatever
21 and rounded it up to 190.

22 Q. And so she provided you with the current rate?

23 A. Yes. I think somewhere in this there's an e-mail
24 that says that the current rate is 175.

25 Q. Okay. And is the basis for the 2.5 percent

1 increase in income the same source we discussed
2 before with the --

3 A. Yes.

4 Q. -- other 2.5 percent?

5 So looking at Assumption Number 5,
6 what's the basis for the assumption that UVM's
7 contributions to Dr. Porter's retirement plan
8 would be 9 percent?

9 A. I believe that's what she told me. Plus, I had
10 just finished up a case within six months, eight
11 months of this, I think, and I had actual
12 documents from UVM that indicated it was
13 9 percent. I'm -- anyways, I've seen the
14 9 percent.

15 Q. Were there any other post-termination fringe
16 benefits that you considered valuing?

17 A. I didn't. I mean, they're -- again, there'd be
18 Social Security, but I didn't put it in the -- in
19 the pre-injury. And then I -- I think UVM has a
20 wellness program, and so didn't Dartmouth.

21 Q. Okay. And were discussions with counsel or
22 Dr. Porter the basis for your assumption that
23 UVM's contribution to her health insurance policy
24 is comparable to Dartmouth-Hitchcock's
25 contribution?

1 purely economic standpoint, the opportunity cost
2 of owning that place is what she can rent it for.

3 Q. Understood. So the discussion we had about
4 housing rental costs with respect to Footnote 10
5 in Scenario A would apply also to Scenario B?

6 A. Yes.

7 Q. And is the same true for utilities, renters
8 insurance, heat, and travel?

9 A. Yes.

10 Q. So it's the exact same calculation in Footnote 10
11 for Scenario B made using the exact same
12 assumptions and the same basis for those
13 assumptions as Scenario A, it's just projected
14 out beyond July 2021?

15 A. Yes.

16 Q. Did you consider when calculating the costs in
17 Footnote 10 for Scenario B whether they would
18 change because she's only working two days a week
19 at the University of Vermont instead of
20 full-time?

21 A. No.

22 Q. Okay. What was your basis for assuming the
23 analysis out to the year 2033 for both scenarios?

24 A. I believe in the conversation that I had with
25 Dr. Johnson that she projected there was a

1 possibility she'd work out to 70.

2 She liked what she was doing and would
3 like to do it as long as she could. And she had
4 no plans at that point of when she definitely
5 would retire.

6 Q. You mean Dr. Porter?

7 A. Dr. Porter, I'm sorry. Dr. Porter would have
8 retired. So therefore, I carried it out to 70.
9 But again, I want to underscore that it's up to
10 the trier of fact to determine how long he thinks
11 or she thinks it would be reasonable for
12 Dr. Porter to work out into the future. That's
13 why I have a running total there.

14 So if the trier of fact thinks it's --
15 out through age 66 is -- is a reasonable area to
16 truncate, then they can look at the corresponding
17 number for the -- for age 66.

18 Q. On both of the projected lost earnings charts for
19 Scenario A and Scenario B, there's a footnote
20 that states "The year 2029 (under lined) is
21 consistent with the worklife of a 56-year-old
22 female with a graduate degree."

23 What's the basis for that assertion?

24 A. That's a study that was -- that's actually been
25 done -- updated about four times. It's in the

1 National Journal of Forensic Economics that looks
2 at work lives by sex and age and education level.

3 The problem with it is that it has
4 people with master's, as well as Ph.D.s and
5 M.D.s. And if you look at education overall
6 for -- they have less than high school, high
7 school, some college, associate's degree,
8 four-year degree, and then graduate degree. You
9 see work lives increase, everything else being
10 held constant and stuff. You look at female
11 50 years of age, if you follow them through those
12 different education levels, the work life gets
13 greater and greater.

14 One might expect, and I would expect
15 that, that there would be an increase in work
16 lives for somebody that had a Ph.D. in general
17 than somebody with a master's.

18 So what I'm saying is that I think
19 it's a conservative estimate of -- of an average
20 work life.

21 Q. You mentioned a study. How recent was that
22 study?

23 A. I think -- well, it's -- it's been -- I think
24 this is the fourth update. And the last one, I
25 think, was 2015.

1 Q. Okay. So you would have reviewed whatever the
2 most recent update was?

3 A. Yes.

4 Q. Did you assume any risk of normal termination,
5 that she might not be able to -- that Plaintiff
6 might not be able to work to any given year
7 because of normal life events?

8 A. No, I did not. And that's why there is this
9 running total in here. Unlike maybe in a
10 personal injury case, where I'd render an opinion
11 that I think the loss is X, the person would have
12 worked out to their normal work life, and so when
13 I do all the calculations, their loss is
14 \$850,000.

15 And in wrongful termination cases or
16 employment cases, I put this running total in
17 there because I'm going to let the trier of fact
18 take into account those factors of -- that a
19 person might not work there for X number of
20 years.

21 They're going to hear a lot more
22 testimony than I'm going to hear. And then it's
23 up to them to make that decision that I think,
24 well, it's reasonable to expect she would -- that
25 Dr. Porter would work for 3 more years or 5 more

1 years or 15 more years.

2 So I'm not rendering an opinion that
3 she would work out to age 70. I'm not rendering
4 an opinion that she would work out to age 60.
5 I'm leaving that entirely up to the trier of
6 fact.

7 Q. Okay. Let's take a five-minute break.

8 A. Okay.

9 (Recess taken.)

10 ATTORNEY JOSEPH: All right. Back on
11 the record.

12 Q. Looking back at Exhibit 5, which is the file that
13 you brought in, could you tell me, to the best of
14 your ability, what, if any, documents you relied
15 on that aren't in that file?

16 A. I did look at the 2000 -- I think it's 2019
17 fringe benefit package; the same as the '17,
18 except it was 2019.

19 And I think -- I think I saw 2017
20 income tax returns. I think it may be on my
21 computer. But more importantly was the -- in
22 2017 was the W-2s, which are in here.

23 I can't think of anything that --

24 Q. Okay. And is the 2017 tax return in this file?

25 A. No. I did not see it.